

CABLE TELEVISION - CONSUMER INFORMATION

JURISDICTION (or, Who's in Charge?)

In October 1984 Congress passed the Cable Communications Policy Act of 1984 (Cable Act) setting out a dual system of regulation over the cable industry. Its purpose was to establish a national policy encouraging the growth and development of cable television. Under the Cable Act, certain regulatory responsibilities are given to the FCC while others are given to local franchising authorities.

Cable television systems are generally regulated extensively at the local level--e.g., through city, town, or county governments, and in some cases state agencies. Although cable systems are required to register with the FCC, this is more or less an informational filing. The FCC does not "license" cable systems as it does broadcast services.

It was the intent of the Cable Act that the franchise process take place at the local level, where government officials have the best understanding of local communications needs. Therefore, local authorities are given exclusive rights to negotiate with and choose their cable providers and in limited cases may regulate the rates charged to subscribers.

The following cable matters are not regulated by the FCC:

- False or misleading advertising about the cable system's capabilities
 - Installation, additional set hook-up, and related fees
 - Inaccurate bills or questionable billing practices
 - Inadequate provision for handling calls from subscribers
 - Damage to property
 - Disconnections
 - Frequent service outages
 - Extension of cable service to individual homes and businesses
 - Repairs
 - Improper wiring
 - Converter, decoder, remote control, and other equipment and related fees.
- (It is advisable to check with your cable system operator before purchasing a "cable-ready" television set, to be certain that the receiver you propose to buy is compatible with the frequency channelling plan your cable system uses.)

If your complaint falls within any of these areas, contact your local officials or your consumer protection agency to ascertain what remedies may be available to you. In some cases, your complaint may involve a private controversy to be resolved in a local court. In any event, it is recommended that you make your complaints in writing to your cable company and local officials responsible for regulation of your cable system.

Cable operators have complete discretion to decide what premium programming (pay-TV) services to offer. To protect their proprietary rights, cable operators or programmers may lawfully choose to scramble or "encrypt" certain nonbroadcast material on pay-TV and charge extra for decoding devices as part of their marketing scheme.

ACCESS (or, Who Can Use Cable Channels?)

To assure "the widest possible diversity of information sources," the Cable Act requires cable systems with 36 or more channels to lease a certain number of channels to persons unaffiliated with the cable operators. Reasonable prices, terms, and conditions are to be negotiated in good faith by the parties involved, but the cable operator cannot exercise editorial control over such "commercial use." Any disputes regarding access are to be resolved in the appropriate federal court. Special relief is available from the FCC only upon a showing of three prior adjudicated violations.

In addition, franchising authorities may contract with their cable operators to have channels or time periods available for public, educational, or governmental use, independent of editorial control by the cable operator.

TECHNICAL REQUIREMENTS

Local authorities are responsible for initial enforcement of the FCC's rules governing technical standards for cable signals. Cable systems are required to have a process for resolving complaints about technical service. The FCC should be notified immediately, however, of any cable radiation frequency interference with other services.

~~EXCERPTS FROM 1992 CABLE ACT~~

(5) ensure that cable television operators do not have undue market power vis-a-vis video programmers and consumers.

(c) Definitions.--Section 602 of the Communications Act of 1934 (47 U.S.C. 531) is amended--

(1) by redesignating paragraph (16) as paragraph (19);

(2) by striking "and" at the end of paragraph (15);

(3) by redesignating paragraphs (11) through (15) as paragraphs (13) through (17), respectively;

(4) by redesignating paragraphs (1) through (10) as paragraphs (2) through (11), respectively;

(5) by inserting before paragraph (2) (as so redesignated) the following new paragraph:

"(1) the term 'activated channels' means those channels engineered at the headend of a cable system for the provision of services generally available to residential subscribers of the cable system, regardless of whether such services actually are provided, including any channel designated for public, educational, or governmental use;"

(6) by inserting after paragraph (11) (as so redesignated) the following new paragraph:

"(12) the term 'multichannel video programming distributor' means a person such as, but not limited to, a cable operator, a multichannel multipoint distribution service, a direct broadcast satellite service, or a television receive-only satellite program distributor, who makes available for purchase, by subscribers or customers, multiple channels of video programming;" and

(7) by inserting after paragraph (17) (as so redesignated) the following new paragraph:

"(18) the term 'usable activated channels' means activated channels of a cable system, except those channels whose use for the distribution of broadcast signals would conflict with technical and safety regulations as determined by the Commission; and".

SEC. 3. REGULATION OF RATES.

(a) Amendment.--Section 623 of the Communications Act of 1934 (47 U.S.C. 543) is amended to read as follows:

***SEC. 623. REGULATION OF RATES.**

"(a) Competition Preference; Local and Federal Regulation.--

"(1) In general.--No Federal agency or State may regulate the rates for the provision of cable service except to the extent provided under this section and section 612. Any franchising authority may regulate the rates for the provision of cable service, or any other communications service provided over a cable system to cable subscribers, but only to the extent provided under this section. No Federal agency, State, or franchising authority may regulate the rates for cable service of a cable system that is owned or operated by a local government or franchising authority within whose jurisdiction that cable system is located and that is the only cable system located within such jurisdiction.

"(2) Preference for competition.--If the Commission finds that a cable system is subject to effective competition, the rates for the provision of cable service by such system shall not be subject to regulation by the Commission or by a State or franchising authority under this section. If the Commission finds that a cable system is not subject to effective competition--

"(A) the rates for the provision of basic cable service shall be subject to regulation by a franchising authority, or by the Commission if the Commission exercises jurisdiction pursuant to paragraph (6), in accordance with the regulations prescribed by the Commission under subsection (b); and

"(B) the rates for cable programming services shall be subject to regulation by the Commission under subsection (c).

"(3) Qualification of franchising authority.--A franchising authority

that seeks to exercise the regulatory jurisdiction permitted under paragraph (2) (A) shall file with the Commission a written certification that--

"(A) the franchising authority will adopt and administer regulations with respect to the rates subject to regulation under this section that are consistent with the regulations prescribed by the Commission under subsection (b);

"(B) the franchising authority has the legal authority to adopt, and the personnel to administer, such regulations; and

"(C) procedural laws and regulations applicable to rate regulation proceedings by such authority provide a reasonable opportunity for consideration of the views of interested parties.

"(4) Approval by commission.--A certification filed by a franchising authority under paragraph (3) shall be effective 30 days after the date on which it is filed unless the Commission finds, after notice to the authority and a reasonable opportunity for the authority to comment, that--

"(A) the franchising authority has adopted or is administering regulations with respect to the rates subject to regulation under this section that are not consistent with the regulations prescribed by the Commission under subsection (b);

"(B) the franchising authority does not have the legal authority to adopt, or the personnel to administer, such regulations; or

"(C) procedural laws and regulations applicable to rate regulation proceedings by such authority do not provide a reasonable opportunity for consideration of the views of interested parties.

If the Commission disapproves a franchising authority's certification, the Commission shall notify the franchising authority of any revisions or modifications necessary to obtain approval.

"(5) Revocation of jurisdiction.--Upon petition by a cable operator or other interested party, the Commission shall review the regulation of cable system rates by a franchising authority under this subsection. A copy of the petition shall be provided to the franchising authority by the person filing the petition. If the Commission finds that the franchising authority has acted inconsistently with the requirements of this subsection, the Commission shall grant appropriate relief. If the Commission, after the franchising authority has had a reasonable opportunity to comment, determines that the State and local laws and regulations are not in conformance with the regulations prescribed by the Commission under subsection (b), the Commission shall revoke the jurisdiction of such authority.

"(6) Exercise of jurisdiction by commission.--If the Commission disapproves a franchising authority's certification under paragraph (4), or revokes such authority's jurisdiction under paragraph (5), the Commission shall exercise the franchising authority's regulatory jurisdiction under paragraph (2) (A) until the franchising authority has qualified to exercise that jurisdiction by filing a new certification that meets the requirements of paragraph (3). Such new certification shall be effective upon approval by the Commission. The Commission shall act to approve or disapprove any such new certification within 90 days after the date it is filed.

"(b) Establishment of Basic Service Tier Rate Regulations.--

"(1) Commission obligation to subscribers.--The Commission shall, by regulation, ensure that the rates for the basic service tier are reasonable. Such regulations shall be designed to achieve the goal of protecting subscribers of any cable system that is not subject to effective competition from rates for the basic service tier that exceed the rates that would be charged for the basic service tier if such cable system were subject to effective competition.

"(2) Commission regulations.--Within 180 days after the date of enactment of the Cable Television Consumer Protection and Competition Act of 1992, the Commission shall prescribe, and periodically thereafter

revise, regulations to carry out its obligations under paragraph (1). In prescribing such regulations, the Commission--

"(A) shall seek to reduce the administrative burdens on subscribers, cable operators, franchising authorities, and the Commission;

"(B) may adopt formulas or other mechanisms and procedures in complying with the requirements of subparagraph (A); and

"(C) shall take into account the following factors:

"(i) the rates for cable systems, if any, that are subject to effective competition;

"(ii) the direct costs (if any) of obtaining, transmitting, and otherwise providing signals carried on the basic service tier, including signals and services carried on the basic service tier pursuant to paragraph (7) (B), and changes in such costs;

"(iii) only such portion of the joint and common costs (if any) of obtaining, transmitting, and otherwise providing such signals as is determined, in accordance with regulations prescribed by the Commission, to be reasonably and properly allocable to the basic service tier, and changes in such costs;

"(iv) the revenues (if any) received by a cable operator from advertising from programming that is carried as part of the basic service tier or from other consideration obtained in connection with the basic service tier;

"(v) the reasonably and properly allocable portion of any amount assessed as a franchise fee, tax, or charge of any kind imposed by any State or local authority on the transactions between cable operators and cable subscribers or any other fee, tax, or assessment of general applicability imposed by a governmental entity applied against cable operators or cable subscribers;

"(vi) any amount required, in accordance with paragraph (4), to satisfy franchise requirements to support public, educational, or governmental channels or the use of such channels or any other services required under the franchise; and

"(vii) a reasonable profit, as defined by the Commission consistent with the Commission's obligations to subscribers under paragraph (1).

"(3) Equipment.--The regulations prescribed by the Commission under this subsection shall include standards to establish, on the basis of actual cost, the price or rate for--

"(A) installation and lease of the equipment used by subscribers to receive the basic service tier, including a converter box and a remote control unit and, if requested by the subscriber, such addressable converter box or other equipment as is required to access programming described in paragraph (8); and

"(B) installation and monthly use of connections for additional television receivers.

"(4) Costs of franchise requirements.--The regulations prescribed by the Commission under this subsection shall include standards to identify costs attributable to satisfying franchise requirements to support public, educational, and governmental channels or the use of such channels or any other services required under the franchise.

"(5) Implementation and enforcement.--The regulations prescribed by the Commission under this subsection shall include additional standards, guidelines, and procedures concerning the implementation and enforcement of such regulations, which shall include--

"(A) procedures by which cable operators may implement and franchising authorities may enforce the regulations prescribed by the Commission under this subsection;

"(B) procedures for the expeditious resolution of disputes between cable operators and franchising authorities concerning the administration of such regulations;

"(C) standards and procedures to prevent unreasonable charges for changes in the subscriber's selection of services or equipment subject to regulation under this section, which standards shall require that charges for changing the service tier selected shall be based on the cost of such change and shall not exceed nominal amounts when the system's configuration permits changes in service tier selection to be effected solely by coded entry on a computer terminal or by other similarly simple method; and

"(D) standards and procedures to assure that subscribers receive notice of the availability of the basic service tier required under this section.

"(6) Notice.--The procedures prescribed by the Commission pursuant to paragraph (5) (A) shall require a cable operator to provide 30 days' advance notice to a franchising authority of any increase proposed in the price to be charged for the basic service tier.

"(7) Components of basic tier subject to rate regulation.--

"(A) Minimum contents.--Each cable operator of a cable system shall provide its subscribers a separately available basic service tier to which subscription is required for access to any other tier of service. Such basic service tier shall, at a minimum, consist of the following:

"(i) All signals carried in fulfillment of the requirements of sections 614 and 615.

"(ii) Any public, educational, and governmental access programming required by the franchise of the cable system to be provided to subscribers.

"(iii) Any signal of any television broadcast station that is provided by the cable operator to any subscriber, except a signal which is secondarily transmitted by a satellite carrier beyond the local service area of such station.

"(B) Permitted additions to basic tier.--A cable operator may add additional video programming signals or services to the basic service tier. Any such additional signals or services provided on the basic service tier shall be provided to subscribers at rates determined under the regulations prescribed by the Commission under this subsection.

"(8) Buy-through of other tiers prohibited.--

"(A) Prohibition.--A cable operator may not require the subscription to any tier other than the basic service tier required by paragraph (7) as a condition of access to video programming offered on a per channel or per program basis. A cable operator may not discriminate between subscribers to the basic service tier and other subscribers with regard to the rates charged for video programming offered on a per channel or per program basis.

"(B) Exception; limitation.--The prohibition in subparagraph (A) shall not apply to a cable system that, by reason of the lack of addressable converter boxes or other technological limitations, does not permit the operator to offer programming on a per channel or per program basis in the same manner required by subparagraph (A). This subparagraph shall not be available to any cable operator after--

"(i) the technology utilized by the cable system is modified or improved in a way that eliminates such technological limitation; or

"(ii) 10 years after the date of enactment of the Cable Television Consumer Protection and Competition Act of 1992, subject to subparagraph (C).

"(C) Waiver.--If, in any proceeding initiated at the request of any cable operator, the Commission determines that compliance with the requirements of subparagraph (A) would require the cable operator to increase its rates, the Commission may, to the extent consistent with the public interest, grant such cable operator a waiver from such requirements for such specified period as the Commission

determines reasonable and appropriate.

"(c) Regulation of Unreasonable Rates.--

"(1) Commission regulations.--Within 180 days after the date of enactment of the Cable Television Consumer Protection and Competition Act of 1992, the Commission shall, by regulation, establish the following:

"(A) criteria prescribed in accordance with paragraph (2) for identifying, in individual cases, rates for cable programming services that are unreasonable;

"(B) fair and expeditious procedures for the receipt, consideration, and resolution of complaints from any subscriber, franchising authority, or other relevant State or local government entity alleging that a rate for cable programming services charged by a cable operator violates the criteria prescribed under subparagraph (A), which procedures shall include the minimum showing that shall be required for a complaint to obtain Commission consideration and resolution of whether the rate in question is unreasonable; and

"(C) the procedures to be used to reduce rates for cable programming services that are determined by the Commission to be unreasonable and to refund such portion of the rates or charges that were paid by subscribers after the filing of such complaint and that are determined to be unreasonable.

"(2) Factors to be considered.--In establishing the criteria for determining in individual cases whether rates for cable programming services are unreasonable under paragraph (1) (A), the Commission shall consider, among other factors--

"(A) the rates for similarly situated cable systems offering comparable cable programming services, taking into account similarities in facilities, regulatory and governmental costs, the number of subscribers, and other relevant factors;

"(B) the rates for cable systems, if any, that are subject to effective competition;

"(C) the history of the rates for cable programming services of the system, including the relationship of such rates to changes in general consumer prices;

"(D) the rates, as a whole, for all the cable programming, cable equipment, and cable services provided by the system, other than programming provided on a per channel or per program basis;

"(E) capital and operating costs of the cable system, including the quality and costs of the customer service provided by the cable system; and

"(F) the revenues (if any) received by a cable operator from advertising from programming that is carried as part of the service for which a rate is being established, and changes in such revenues, or from other consideration obtained in connection with the cable programming services concerned.

"(3) Limitation on complaints concerning existing rates.--Except during the 180-day period following the effective date of the regulations prescribed by the Commission under paragraph (1), the procedures established under subparagraph (B) of such paragraph shall be available only with respect to complaints filed within a reasonable period of time following a change in rates that is initiated after that effective date, including a change in rates that results from a change in that system's service tiers.

"(d) Uniform Rate Structure Required.--A cable operator shall have a rate structure, for the provision of cable service, that is uniform throughout the geographic area in which cable service is provided over its cable system.

"(e) Discrimination; Services for the Hearing Impaired.--Nothing in this title shall be construed as prohibiting any Federal agency, State, or a franchising authority from--

"(1) prohibiting discrimination among subscribers and potential subscribers to cable service, except that no Federal agency, State, or franchising authority may prohibit a cable operator from offering

reasonable discounts to senior citizens or other economically disadvantaged group discounts; or

"(2) requiring and regulating the installation or rental of equipment which facilitates the reception of cable service by hearing impaired individuals.

"(f) Negative Option Billing Prohibited.--A cable operator shall not charge a subscriber for any service or equipment that the subscriber has not affirmatively requested by name. For purposes of this subsection, a subscriber's failure to refuse a cable operator's proposal to provide such service or equipment shall not be deemed to be an affirmative request for such service or equipment.

"(g) Collection of Information.--The Commission shall, by regulation, require cable operators to file with the Commission or a franchising authority, as appropriate, within one year after the date of enactment of the Cable Television Consumer Protection and Competition Act of 1992 and annually thereafter, such financial information as may be needed for purposes of administering and enforcing this section.

"(h) Prevention of Evasions.--Within 180 days after the date of enactment of the Cable Television Consumer Protection and Competition Act of 1992, the Commission shall, by regulation, establish standards, guidelines, and procedures to prevent evasions, including evasions that result from retiering, of the requirements of this section and shall, thereafter, periodically review and revise such standards, guidelines, and procedures.

"(i) Small System Burdens.--In developing and prescribing regulations pursuant to this section, the Commission shall design such regulations to reduce the administrative burdens and cost of compliance for cable systems that have 1,000 or fewer subscribers.

"(j) Rate Regulation Agreements.--During the term of an agreement made before July 1, 1990, by a franchising authority and a cable operator providing for the regulation of basic cable service rates, where there was not effective competition under Commission rules in effect on that date, nothing in this section (or the regulations thereunder) shall abridge the ability of such franchising authority to regulate rates in accordance with such an agreement.

"(k) Reports on Average Prices.--The Commission shall annually publish statistical reports on the average rates for basic cable service and other cable programming, and for converter boxes, remote control units, and other equipment, of--

"(1) cable systems that the Commission has found are subject to effective competition under subsection (a) (2), compared with

"(2) cable systems that the Commission has found are not subject to such effective competition.

"(l) Definitions.--As used in this section--

"(1) The term 'effective competition' means that--

"(A) fewer than 30 percent of the households in the franchise area subscribe to the cable service of a cable system;

"(B) the franchise area is--

"(i) served by at least two unaffiliated multichannel video programming distributors each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and

"(ii) the number of households subscribing to programming services offered by multichannel video programming distributors other than the largest multichannel video programming distributor exceeds 15 percent of the households in the franchise area; or

"(C) a multichannel video programming distributor operated by the franchising authority for that franchise area offers video programming to at least 50 percent of the households in that franchise area.

"(2) The term 'cable programming service' means any video programming provided over a cable system, regardless of service tier, including installation or rental of equipment used for the receipt of such video

programming, other than (A) video programming carried on the basic service tier, and (B) video programming offered on a per channel or per program basis."

(b) Effective Date.--The amendment made by subsection (a) shall take effect 180 days after the date of enactment of this Act, except that the authority of the Federal Communications Commission to prescribe regulations is effective on such date of enactment.

SEC. 4. CARRIAGE OF LOCAL COMMERCIAL TELEVISION SIGNALS.

Part II of title VI of the Communications Act of 1934 is amended by inserting after section 613 (47 U.S.C. 533) the following new section:

"SEC. 614. CARRIAGE OF LOCAL COMMERCIAL TELEVISION SIGNALS.

"(a) Carriage Obligations.--Each cable operator shall carry, on the cable system of that operator, the signals of local commercial television stations and qualified low power stations as provided by this section. Carriage of additional broadcast television signals on such system shall be at the discretion of such operator, subject to section 325(b).

"(b) Signals Required.--

"(1) In general.--(A) A cable operator of a cable system with 12 or fewer usable activated channels shall carry the signals of at least three local commercial television stations, except that if such a system has 300 or fewer subscribers, it shall not be subject to any requirements under this section so long as such system does not delete from carriage by that system any signal of a broadcast television station.

"(B) A cable operator of a cable system with more than 12 usable activated channels shall carry the signals of local commercial television stations, up to one-third of the aggregate number of usable activated channels of such system.

"(2) Selection of signals.--Whenever the number of local commercial television stations exceeds the maximum number of signals a cable system is required to carry under paragraph (1), the cable operator shall have discretion in selecting which such stations shall be carried on its cable system, except that--

"(A) under no circumstances shall a cable operator carry a qualified low power station in lieu of a local commercial television station; and

"(B) if the cable operator elects to carry an affiliate of a broadcast network (as such term is defined by the Commission by regulation), such cable operator shall carry the affiliate of such broadcast network whose city of license reference point, as defined in section 76.53 of title 47, Code of Federal Regulations (in effect on January 1, 1991), or any successor regulation thereto, is closest to the principal headend of the cable system.

"(3) Content to be carried.--(A) A cable operator shall carry in its entirety, on the cable system of that operator, the primary video, accompanying audio, and line 21 closed caption transmission of each of the local commercial television stations carried on the cable system and, to the extent technically feasible, program-related material carried in the vertical blanking interval or on subcarriers. Retransmission of other material in the vertical blanking interval or other nonprogram-related material (including teletext and other subscription and advertiser-supported information services) shall be at the discretion of the cable operator. Where appropriate and feasible, operators may delete signal enhancements, such as ghost-canceling, from the broadcast signal and employ such enhancements at the system headend or headends.

"(B) The cable operator shall carry the entirety of the program schedule of any television station carried on the cable system unless carriage of specific programming is prohibited, and other programming authorized to be substituted, under section 76.67 or subpart F of part 76 of title 47, Code of Federal Regulations (as in effect on January 1, 1991), or any successor regulations thereto.